

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

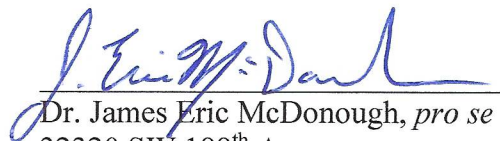
PLAINTIFF'S DOCUMENTS FOR APRIL 5, 2019 DISCOVERY HEARING

Pro se Plaintiff hereby files this packet of documents to the Honorable Judge Rebull for
the discover hearing scheduled for April 5, 2019 in the above styled case.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this packet of documents has been served
by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 26th
day of March 2019.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

INDEX OF DOCUMENTS FOR APRIL 5, 2019 DISCOVERY HEARING

IN PUBLIC RECORDS CASE NO. 17-017515

- 1) City of Homestead's Motion for Protective Order.
- 2) Plaintiff's Verified Motion in Opposition to City of Homestead's Motion for Protective Order.
 - a) Exhibit A – Defendant's response to Plaintiff's records request which mirrored his discovery request for Production of Documents.
- 3) Plaintiff's Verified Motion to Compel Better Discovery Responses and for Sanctions.
 - a) Exhibit A – Email chain between attorneys for Defendant showing their intention to hide material facts from the Court.
- 4) Verified Joint Motion for Order to Show Cause and Sanctions.
 - a) Exhibit A – Plaintiff's email to opposing counsel to confer on dates for deposition.
 - b) Exhibit B – Opposing counsel's email to Plaintiff stating the deponents would not appear for deposition.
 - c) Exhibit C – Plaintiff's email to deponents reminding them of obligation to appear.
 - d) Exhibit D – Opposing Counsel's email to Plaintiff claiming subpoenas were deficient.
 - e) Exhibit E – Plaintiff's email to deponents and opposing counsel explaining the basis for the depositions and reminding the deponents their attendance was expected.
 - f) Exhibit F – Certificates of non-appearance for deponents Zeskind and Sewell.
- 5) First Notice of Filing: Defendant's attorney Sam Zeskind admitting to deliberately misleading this Court about non-produced records in Case No. 16-12412 CA (13).
- 6) Second Notice of Filing: Alternative Writ of Mandamus in Case No. 19-06869 and production of records three times after filing suit.
- 7) Plaintiff, Dr. James Eric McDonough's Second Request For Production of Documents to Defendant.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR. JAMES ERIC MCDONOUGH, A.K.A,
DOC JUSTICE, individually and in his capacity
as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,

CASE NO.: 17-17515 CA (13)

Plaintiff,
vs.

CITY OF HOMESTEAD,
a Florida municipal Corporation,
Defendant.

CITY OF HOMESTEAD'S MOTION FOR PROTECTIVE ORDER

Defendant, City of Homestead ("City"), by and through undersigned counsel and pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, hereby moves for entry of a protective order precluding the depositions of Elizabeth Sewell ("Sewell") and Samuel Zeskind ("Zeskind"). In support thereof, the City states as follows:

PRELIMINARY STATEMENT

The City and Plaintiff have filed competing motions for summary judgment. The City's motion does not require any factual analysis and, instead, is directed solely at whether Plaintiff's claims for declaratory and injunctive relief are legally viable. In his motion, Plaintiff expressly asserts that there are no disputed facts. Yet Plaintiff now seeks to take the depositions of Sewell (the City Clerk) and Zeskind (litigation counsel for the City). Because there are no relevant factual issues left to resolve in this matter, there is no legitimate basis for the depositions. As such, it is clear that Plaintiff only seeks to take these depositions to annoy or embarrass Sewell and Zeskind and to cause further unnecessary expense to the City. Florida law is clear that protective orders are appropriate under these circumstances. Accordingly, this Court should exercise its broad discretion in overseeing discovery matters and grant protective orders precluding Plaintiff from deposing non-party witnesses, Sewell and Zeskind.

PROCEDURAL BACKGROUND

In his initial complaint, Plaintiff initiated the instant action against the City, and defendants Eric Stettin, Zeskind, and Weiss Serota Helfman Cole & Bierman (“WSH”), asserting that the City’s specific responses to three of Plaintiff’s, at least hundred, records requests purportedly violated Chapter 119. Plaintiff subsequently sought and obtained leave to file his First Amended Complaint, which added claims arising out the County Home Rule Charter as well as claims related to approximately six new public records requests and three new defendants – City employees Alexander Rolle, George Gretsas and Sewell. Each of the Defendants then moved to dismiss Plaintiff’s First Amended Complaint. The motions were granted by the Court on May 21, 2018 with specific directions to Plaintiff to clarify his allegations as to which public records requests were purportedly breached by which defendants.

Rather than comply with this Court’s express directives, Plaintiff filed a Second Amended Complaint that, instead, adopted the “kitchen sink” pleading approach. Not only did Plaintiff proceed to add six new Defendants, but he also added claims relating to over two dozen new public records requests. Plaintiff’s second amended complaint thus became “manuscript” in size and wholly contrary to the rules of civil procedure and the pleadings standards set forth by the Court. Accordingly, the Defendants moved to dismiss plaintiff’s Second Amended Complaint asserting, among other things, that Plaintiff’s complaint should be dismissed, with prejudice, due to his willful failure to follow this Court’s express instructions. Plaintiff subsequently moved for and obtained leave to file his Third Amended Complaint. However, in doing so, Plaintiff made no effort to address the material issues raised in the Defendants’ motion to dismiss nor did Plaintiff even attempt to bring his complaint into compliance with the Court’s specific directions to Plaintiff to clarify his allegations.

As a result, the Defendants moved to dismiss the Third Amended Complaint, with prejudice. On November 1, 2018, this Court entered orders dismissing all claims against the City Employees and WSH Defendants, with prejudice. In addition, Plaintiff’s claims against the City

relating to production of unredacted videos responsive to Request 4 and Request 6 and Plaintiff's claims against the City relating to alleged overcharges were dismissed without prejudice. All other claims against the City, ***including Plaintiff's claims for declaratory and injunctive relief, were dismissed, with prejudice.***

On November 10, 2018, Plaintiff filed his Fourth Amended Complaint wherein the only records requested by Plaintiff are the unredacted videos responsive to Request 4 and Request 6. However, it is undisputed that the unredacted videos have been produced to Plaintiff. Moreover, in the Fourth Amended Complaint, Plaintiff does not assert that he was unable to obtain any records as a result of alleged overcharges.

As a result, the only substantive requests for relief remaining in the Fourth Amended Complaint are Plaintiff's already dismissed requests for declaratory and injunctive relief. Accordingly, the City has moved for summary judgment against Plaintiff on the grounds that he is not entitled to the declaratory and injunctive relief sought within the Fourth Amended Complaint.

Plaintiff, likewise, has a pending motion for summary judgment against the City, wherein he asserts that there are no questions of fact. Nevertheless, Plaintiff is seeking to take the depositions of Sewell and Zeskind and has unilaterally set them for February 27, 2019.

ARGUMENT

"Applicable rules and case law make clear that trial courts have broad discretion in overseeing discovery matters and in granting and denying motions for protective order." *Remington Lodging & Hospitality, LLC v. Southernmost House Ltd.*, 206 So. 3d 764, 766 (Fla. 3d DCA 2016) (citing Fla. R. Civ. P. 1.280 and *Rojas v. Ryder Truck Rental, Inc.*, 625 So. 2d 106, 107 (Fla. 3d DCA 1993)). Pursuant to Rule 1.280(c), this Court may "make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. 1.280(c). Moreover, Rule 1.280(c) allows courts to control the timing and sequence of discovery for the convenience of the parties and in the interests of justice. *Id.*

Generally, Florida Rule of Civil Procedure 1.280 allows for the discovery of matters that are relevant and admissible, or reasonably calculated to lead to admissible evidence. *See* Fla. R. Civ. P. 1.280(b)(1), (b)(3). *See also City of Gainesville v. Scotty's Inc.*, 489 So. 2d 1196 (Fla. 1st DCA 1986) (“Rule 1.280(b), provides that the scope of discovery is restricted to that which “is relevant to the subject matter of the pending action....”). “Yet, trial courts have broad discretion in overseeing discovery and in protecting persons from whom discovery is sought.” *Citigroup Inc. v. Holtsberg*, 915 So. 2d 1265, 1270 (Fla. 4th DCA 2005) (citing Fla. R. Civ. P. 1.280(c); *Rojas v. Ryder Truck Rental, Inc.*, 641 So. 2d 855, 857 (Fla. 1994)). In fact, upon a showing of good cause, “the court can prohibit or limit discovery in order to protect a person or party from annoyance, embarrassment, oppression, or undue burden or expense.” *Holtsberg*, 915 So. 2d at 1270 (citing Fla. R. Civ. P. 1.280(c)).¹

Moreover, matters that fall outside the subject matter of the pending action, or outside the four corners of the complaint, are irrelevant and not appropriate for inclusion in discovery matters, in any form. *See, e.g., Allstate Ins. Co. v. Langston*, 655 So. 2d 91 (Fla. 1995) (“Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence”). Further, although the discovery rules are interpreted broadly, courts have made it clear that discovery is not without limits, but must be tailored to the issues of the case and cannot amount to a “fishing expedition.” *See, e.g., Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570 (11th Cir. 1992); *see also Linares v. Broward County Sheriff's Office*, 347 Fed. Appx. 424, 42 (11th Cir.

¹ Specifically, Rule 1.280(c), Fla. R. Civ. P., provides in relevant part:

Upon motion by a party, and for good cause shown, the court in which the action is pending may protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including 1) that the discovery not be had; 2) that the discovery may be had only on specified terms and conditions; 3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; 4) that certain matters not be inquired into, or that the scope of the discovery may be limited to certain matters....

2009) (Discovery rules do not permit a party to go on a “fishing expedition” for relevant information).

In his Fourth Amended Complaint, Plaintiff seeks the production of only one category of records: unredacted copies of the videos responsive to Request 4 and Request 6. *See* 4th Am. Comp., Prayer for Relief (K), p. 14. However, it is undisputed that the City has produced to Plaintiff the unredacted copies of these videos. *See* Plaintiff’s responses to the City’s First Request for Admissions, 20-26. As a result, Plaintiff no longer seeks the production of any records in this “public records” case under Chapter 119.

Instead, Plaintiff asks this Court to make a series of broad declarations concerning the Defendants’ handling of public records requests over the course of the preceding four or five years. *See* 4th Am. Comp., Prayer for Relief (A)-(E), pp. 13-14. Specifically, Plaintiff requests that this Court make the following declarations:

- A. Declare that CITY’s unjustified redaction of video is unlawful.
- B. Declare that charges of \$45.45/hour for IT services is excessive and unlawful.
- C. Declare that inflating the number of hours for production of records is unlawful.
- D. Declare that the imposition of copying fees for electronic records is unlawful.
- E. Declare the refusal to waive the first 30 minutes as is customary was unlawful.

Id. Plaintiff also makes five blanket requests for the Court to effectively enjoin the City from any future breach of Chapter 119. Specifically, Plaintiff requests the following within his Prayer for Relief:

- F. Enjoin CITY from redacting video without a proper exemption.
- G. Enjoin CITY from charging rates which do not reflect a direct cost on the CITY.
- H. Enjoin CITY from inflating the number of hours when producing public records.
- I. Enjoin CITY from charging copying fees when electronic records are available.
- J. Enjoin CITY from refusing to waive the first 30 minutes of production time.

4th Am. Comp., Prayer for Relief, pp. 58-59.

As set forth more fully in the City's Motion for Summary Judgment, the City asserts that Plaintiff is not entitled to the declaratory or injunctive relief. The City's arguments are not grounded in any factual assertions. Instead, the City's Motion for Summary Judgment assumes, for the purposes of the motion, that all of Plaintiff's allegations are true and asserts that, as a matter of law, Plaintiff is simply not entitled to the relief sought. As a result, no discovery is necessary on Plaintiff's part to oppose the City's Motion for Summary Judgment. Similarly, in his own motion for summary judgment, Plaintiff asserts that "no genuine issues of material fact exist with respect to the elements required to sustain a cause of action for violation of the Florida Public Records Act, Chapter 119, Florida Statutes." *See* Plaintiff's Motion at 2. Unquestionably then, Plaintiff cannot now simultaneously assert that he needs to conduct further discovery in support of his own motion. *See Colby v. Ellis*, 562 So. 2d 356, 357 (Fla. 2d DCA 1990) (holding that "[a] party does not have an unlimited right to discovery prior to a hearing on a motion for summary judgment. When the record becomes clear enough to disclose that further discovery is not needed to develop significant aspects of the case and that such discovery is not likely to produce a genuine issue of material fact, discovery should be ended.").

Of course, even if, *arguendo*, relevant factual questions remained, it is clear that the deposition of Zeskind would still not be appropriate. Questions relating to discussions City employees may or may not have had with the City's attorneys in responding to the requests are wholly irrelevant and are not reasonably calculated to lead to the discovery of admissible evidence. Questions relating to whether the City received assistance from its attorneys in responding to the public records requests and if so, the nature of the advice, are, likewise wholly irrelevant. Further still, such inquiries would improperly lead to the discovery of privileged communications. *See, e.g., Coffey-Garcia v. South Miami Hosp., Inc.*, 194 So. 3d 533, 538 (Fla. 3d DCA 2016) (quashing portion of discovery order that required plaintiff to answer questions regarding the communication of legal advice to her by attorneys as such advice "would be

protected by the attorney-client privilege”); *Rousso v. Hannon*, 146 So. 3d 66, 70 (Fla. 3d DCA 2014) (holding that communications between lawyers and clients are privileged from compelled disclosure to third persons through discovery).

Accordingly, good cause exists to grant a protective order precluding the depositions of Sewell and Zeskind to protect them (and the City) from annoyance, embarrassment, oppression, or undue burden or expense.²

WHEREFORE, for these reasons, Defendant, City of Homestead, respectfully request that the Court enter a protective order precluding the depositions Sewell and Zeskind; or, alternatively, staying all discovery, pending the disposition of the Parties’ motions for summary judgment; and for any additional relief this Court deems just and appropriate.

Respectfully submitted,

**WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.**

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By: s/ Matthew H. Mandel

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² Moreover, even if the Court is disinclined to wholly bar these depositions at this stage, the Court should, at a minimum, enter an order staying discovery with respect to Sewell and Zeskind pending the outcome of the competing motions for summary judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-mail via State E-portal this 15th day of February, 2019 to: **Dr. James Eric McDonough**, *pro se*, 32320 SW 199th Ave, Homestead, FL 33030, Email: Phd2b05@gmail.com.

s/ Matthew H. Mandel
MATTHEW H. MANDEL

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

**DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE**, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

**PLAINTIFF'S VERIFIED MOTION IN OPPOSITION TO CITY OF HOMESTEAD'S
MOTION FOR PROTECTIVE ORDER**

Plaintiff, Dr. James Eric McDonough, proceeding *pro se*, hereby files this Motion in Opposition to Defendant, City of Homestead's (hereafter CITY) Motion for Protective Order, and hereby moves this Court to deny CITY's protective order to prevent taking depositions of non-party witnesses. In support thereof, Plaintiff states the following:

PRELIMINARY STATEMENT

1. After Plaintiff filed his motion for summary judgement, CITY filed an answer and affirmative defenses. Within the answer CITY does little more than make unsworn denials of all of Plaintiff's facts and allegations. Within the affirmative defenses CITY scandalously alleges that: a) it did not violate the Public Records Law even though it was found in violation at the first hearing; b) Plaintiff is not entitled to fees even though records were provided even after the Fourth Amended Complaint was filed; c) Plaintiff has filed his requests and/or complaint for an improper purpose; and d) that Plaintiff is engaged in a conspiracy. Obviously, Plaintiff denies all such assertions and allegations.

2. Thereafter, CITY propounded discovery on Plaintiff related to these allegations and the claims remaining in the Fourth Amended Complaint. Plaintiff responded immediately in good faith to CITY's discovery requests and propounded his own discovery requests on CITY.

3. In return CITY has not responded in good faith, and where answers were provided, they were evasive and raise further issues requiring additional discovery. In one instance CITY, responding to one of Plaintiff's request for admissions related to the inflation of time, admits to charging excess time at the inflated internet technology (hereafter "ITS") rate, but alleges had it "accurately" prepared the invoice "the cost would have exceeded the amount actually charged." In another instance CITY alleges that "All 53,000 records were not public posts as they **likely** also included messages and other data/records that had not been posted publicly on Facebook." However, this is not an affirmative denial and City does not deny that most of the 53,000 records were publicly posted and are well beyond the scope of what Plaintiff had requested. Furthermore, CITY failed to provide any evidence or an affidavit supporting any of its unsworn allegations.

4. Non-Party witnesses Samuel Zeskind (hereafter "Zeskind") and Elizabeth Sewell (hereafter Sewell), are the CITY public records attorney and the CITY clerk, respectively, who worked on the contested requests. They are the persons most likely to understand the facts, procedures and policies of CITY with respect to the issues of the redaction of video and excessive charges. Whereas, Zeskind is the witness with the knowledge of the allegation that Plaintiff filed his request for an improper purpose, and likely the claim of conspiracy as well.

5. Plaintiff has a right to discovery on the denials and allegations made by CITY to efficiently prosecute this case and to defend himself from CITY's baseless allegations. Plaintiff intends to keep the discovery narrowly focused within the four corners of the Fourth Amended Complaint to the issues of video redaction, overbilling, interpretation of records request, and the baseless allegations made by CITY meant to misrepresent the material facts of this case.

ARGUMENT

A. CITY HAS BEEN PLAYING FAST AND LOOSE.

6. CITY alleges that since it is finished with its discovery and filed its own motion for summary judgement that Plaintiff no longer has a right to discovery. However, Plaintiff should have a right to discovery related to the denials and allegations made after his filing for summary judgement since it raises a dispute of factual issues central and material to the case.

7. Florida has broad discovery and liberal public records laws. See *Fla. R.Civ. P.* 1.280(b)(1) and *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994), rev. denied, 651 So. 2d 1192 (Fla. 1995), respectively. Additionally, “discovery in a context such as the one at hand may well be appropriate in the circumstance where a good faith belief exists that the public agency may be playing ‘fast and loose’ with the requesting party or the court, once its statutorily delegated authority is activated.” *Lorei v. Smith*, 464 So. 2d 1330, 1333 (Fla. 2d DCA 1985), review denied, 475 So. 2d 695 (Fla. 1985).

8. CITY has made false statements to support its first discovery efforts and has not complied in good faith with Plaintiff’s discovery. Particularly, CITY made false allegations that Plaintiff wanted to teach people how to harass government entities with public records request.

9. In Plaintiff’s first requests for production of records CITY responded objecting to nearly every individual request. For instance, CITY claimed request #1, a list of the number of times it had been sued for violation of the Public Records Law, was not relevant. However, CITY was willing to offer this information to Plaintiff for \$469.70 in a subsequent public records request which mirrored the discovery request. Further, when responding to the records request CITY advised that no records existed for several inquiries while objecting, in bad faith, to the same inquiries in discovery. See Response to Public Records Request **Exhibit A**.¹

¹ The response also appears to state that the charging of \$45.45/hour is a policy, though CITY denies it is a policy.

10. In Plaintiff's recent discovery CITY has been evasive in responding to request for admissions and the related interrogatories. Yet, where CITY has provided responses, the responses contradict the facts and/or are wholly unsupported by testimony or evidence. Such actions define fast and loose. Whereas, depositions are necessary and the most efficient means to uncover the truth behind the factual disputes, before the competing motions for summary judgement are heard.

11. Therefore, this Court should deny CITY's motion for protective order.

B. CITY'S MOTION IS LEGALLY INSUFFICIENT

12. CITY, and not the non-party witnesses, has filed for the protective order. Regardless, the motion for protective order is still otherwise legally insufficient.

13. In *Mathews v. Kant*, 427 So. 2d 369, 370 (Fla. 2d DCA 1983), the court held that in order to quash a subpoena, there must be "some facts before the court tending to show the unreasonableness and oppressiveness[.]" Thus, a party seeking a protective order, at least when claiming undue burden and harassment, cannot simply rely upon unfounded allegations contained within their motion and must present support for their legal positions--unsworn representations of counsel have no evidentiary value. See, e.g. *Topp Telecom, Inc. v. Atkins*, 763 So. 2d 1197, 1199 (Fla. 4th DCA 2000) ("There is obviously no error in overruling this kind of objection when it is not supported by record evidence, such as an affidavit detailing the basis for claiming that the onus of supplying the information or documents is inordinate."); *Beekie v. Morgan*, 751 So. 2d 694, 697 (Fla. 5th DCA 2000) ("But Morgan's attorney offered no good reason why Morgan could not have been deposed at a rescheduled time, other than inconvenience, and the need to take time off from work. Aside from that inconvenience, there was no evidence of annoyance, embarrassment, oppression or undue burden or expense. Protective orders must be based on good cause.").

14. CITY has shown no facts supporting the unreasonableness or oppressiveness of taking the depositions of the non-party witnesses. CITY has provided no evidence testimony or

affidavit showing good cause as to why the protective order is necessary. Whereas, the unsworn representations of CITY's counsel has no evidentiary value to support CITY's claim of annoyance, embarrassment, oppression or undue burden or expense on the non-party witnesses.

15. Therefore, this Court should deny CITY's motion for protective order.

C. THE COMPETING SUMMARY JUDGMENT MOTIONS ARE NOT RIPE.

16. CITY argues that since both parties have filed for summary judgment there are no factual disputes, and as such Plaintiff's discovery should be denied, or alternatively stayed until the motions for summary judgment have been heard. CITY's assertion, however, is patently false. First, CITY denies, without evidence or support, the all allegations of fact made by Plaintiff in his motion for summary judgment. Second, Plaintiff contest the factual assertions made by CITY in its motion for summary judgment, though CITY incorrectly asserts that its motion does not rely upon factual assertions. Plaintiff has cooperated with CITY's discovery, yet CITY has not cooperated with Plaintiff's discovery.

17. As both parties contest all factual assertions made by the other side, the summary judgment motions are not yet ripe, and should not be heard until Plaintiff has completed discovery.

18. Therefore, this Court should deny CITY's motion for protective order.

D. ATTORNEY-CLIENT PRIVILEGE DOES NOT APPLY.

i. *The Information Sought is Not Privileged.*

19. CITY argues that taking the deposition of Zeskind is inappropriate and would lead to the discovery of privileged communications. The only applicable exemptions for privilege are attorney-work product under FS. 119.071(1)(d)1.² and executive session(s) under FS. 286.011(8).³ However, especially for the mainly sought pre-litigation communications, they do not apply.

² Work-product exempts only records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" and must have been prepared exclusively for litigation or prepared in anticipation of imminent litigation.

³ Both the attorney-work product and executive session exemptions only apply during the pendency of litigation.

20. The Florida Supreme Court noted that the work-product exemption was enacted because of “developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege . . .” *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla. 1986). The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). See also *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although s. 90.502, F.S., of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119, F.S.). Moreover, public disclosure of these documents does not violate the public agency’s constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court’s exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company*, supra. And see *Seminole County, Florida v. Wood*, 512 So. 2d 1000, 1001 (Fla. 5th DCA 1987), review denied, 520 So. 2d 586 (Fla. 1988) (the rules of ethics provide that an attorney may divulge a communication when required by law; the Legislature has plenary authority over political subdivisions and can require disclosure of otherwise confidential materials); and AGO 98-59 (records in the files of the former city attorney, who served as a contract attorney for the city, which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records).

21. As non-litigation communications between attorneys and government agencies are requestable public records, they are not exempt under attorney client privilege, and are therefore discoverable. Further, an exemption from disclosure under the Public Records Act does not render

the document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure. See *Department of Health v. Poss*, 45 So. 3d 510 (Fla. 1st DCA 2010); *Department of Professional Regulation v. Spiva*, 478 So. 2d 382 (Fla. 1st DCA 1985). “Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.” *Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984).

22. Plaintiff does not seek attorney-client privileged information in deposition. What Plaintiff seeks is information related to the policies of redacting video and billing practices, as well as how the language in a records request is interpreted, i.e. broadly or narrowly and why. Additionally, Plaintiff seeks discovery of CITY’s claim that he made a statement of an intent to write a book on how to harass government agencies with public records requests. CITY relies upon this falsehood to make the claim that they are entitled to their attorney’s fees and costs from Plaintiff. There is no evidence of such a claim being made other than by attorney Zeskind. Plaintiff has a right to discover the details of such a claim and to defend against it.

23. Therefore, this Court should deny CITY’s motion for protective order relative to attorney Zeskind.

ii. Deposing CITY’s Counsel is Supported by Existing Law.

24. There is support and precedent in the case law to take any attorney’s deposition in Florida, particularly attorney Zeskind who is not the attorney of record in the instant case but is the public records expert for CITY.

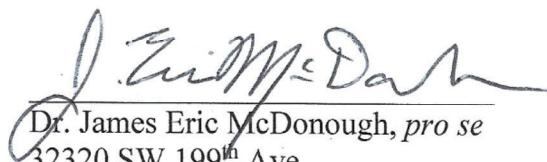
25. A party seeking to take the deposition of opposing counsel must prove its necessity by showing that: (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case.” *Shelton v. American Motors Corp.*, 805 F. 2d 1323 (8th

Cir. 1986). The *Shelton* test has been adopted in Florida by both the 3d and 5th DCA. See *State v. Donaldson*, 763 So. 2d 1252 (Fla. 3d DCA 2000), *Zimmerman v. State*, 114 So. 3d 446 (Fla. 5th DCA 2013), and *Eller-I.T.O. Stevedoring Co., L.L.C. v. Pandolfo*, 167 So. 3d 495 (Fla. 3d DCA 2015).

26. Plaintiff meets the three parts of the *Shelton* test as: (1) Plaintiff has no other means to obtain the necessary information other than to depose Zeskind, as Zeskind is the public records expert for CITY, Zeskind at least formulated the policy to redact video and likely the billing policy as well, and it was Zeskind who set forth the false claim of Plaintiff's intent to write a book on how to harass government agencies; (2) information related to the policies of redacting video and billing, how the language of records request are interpreted, and the claim that Plaintiff filed his requests or the instant action for improper purposes are certainly relevant to the issues and are non-privileged; and (3) the information is crucial to the Plaintiff's claims for declaratory and injunctive relief, and to Plaintiff's defense of the dubious claims raised by CITY.

27. Therefore, this Court should deny CITY's motion for protective order relative to attorney Zeskind.

Respectfully submitted,

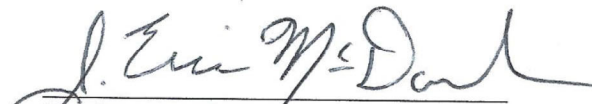


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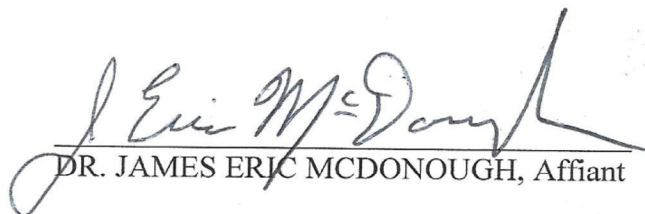
I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 11th day of March 2019.

Respectfully submitted,


Dr. James Eric McDonough, *pro se*

VERIFICATION

As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.

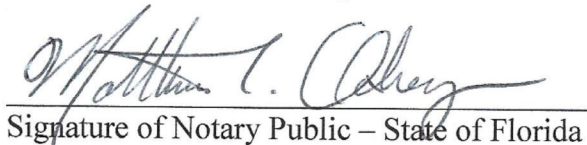

DR. JAMES ERIC MCDONOUGH, Affiant

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 11th day of March 2019 by

Dr. James Eric McDonough


Signature of Notary Public – State of Florida

MATTHEW T. Oakey
Name of Notary, Typed, Printed or Stamped

Known ☒ OR Produced Identification _____

Type of Identification Produced _____



EXHIBIT A



February 14, 2018

VIA Email (phd2b05@gmail.com)

James McDonough
32320 SW 199 Avenue
Miami, FL

City Council

Jeff Porter
Mayor

Stephen R. Shelley
Vice Mayor

Jenifer N. Bailey
Councilwoman

Jon Burgess
Councilman

Patricia Fairclough
Councilwoman

Elvis R. Maldonado
Councilman

Larry Roth
Councilman

George Gretsas
City Manager

City Hall

100 Civic Court
Homestead, FL 33030
305-224-4400
www.cityofhomestead.com

Re: Public Records Requests to the City

Dear Mr. McDonough:

The City is in receipt of your several Public Records Requests within what was originally your First Request for Production to the City in Case No. 17-17515 CA (30). The following is the City's response to each of your requests:

1) "Every legal complaint, in the last 10 years, where Homestead has been sued for violations of FSS. 119.

a) Sublist of every complaint which was lost, settled or appealed."

Response:

The City does not maintain a summary, database or log of the information you have requested. Therefore, in order to provide the information you have requested, every complaint will need to be reviewed to determine whether the complaint includes a claim for violation of Chapter 119. As such, your request for documents and information is extensive, and will require extensive use of information technology resources, or extensive clerical or supervisory assistance by personnel of the City to identify, manage and compile the requested information. It is the policy of the City to impose a duplication charge for copying public records and additional charges in accordance with the fee schedule enumerated in Section 119.07(4), Florida Statutes. It is the City's policy that a deposit be submitted by the requesting party in an amount equal to the anticipated cost of the assembly and duplication before processing will commence, particularly where clerical services of an extensive nature are necessary.

Having reviewed the nature and scope of your request, and after examining all possible means by which the preparation and review of the requested records could be performed, the City has determined that the required advance deposit will be \$469.70. This amount includes:

- (1) staff time of 5 hours at a rate of \$31.00 per hour. This includes the research, preparation and printing/copying of over 350 complaints, totaling \$155.00; and
- (2) staff time of 6 hours at a rate of \$52.45 per hour (which is based on the hourly rate and fringe benefits associated with the Deputy City Clerk). This review includes the review of over 350 complaints at the rate of 1 complaint per minute, totaling 314.70.

Pursuant to Florida law, if the actual costs exceed that amount, work will temporarily cease and you will be asked to replenish the deposit, upon which work will resume. You are responsible for the additional amount. Conversely, if the review takes less time, the remaining portion of the deposit will be refunded accordingly. At your convenience, you may submit a check in the amount of \$469.70¹ payable to the City of Homestead, Florida. The City will begin processing your request as soon as your deposit has been received.

- 2) Every legal complaint, in the last 10 years, where the other government clients of WSH have been sued for violations of FSS. 119.

a) Sublist of every complaint which was lost, settled or appealed.

Response:

The City has no records responsive to this Request.

- 3) Every response sent, in the last 10 years, to a records requester where any government clients of WSH have claimed either FSS. 90.502 or FSS. 119.071(1)(d)(l) as an exemption to providing financial records.

a) Sublist where additional exemptions have been later claimed.

Response:

With respect to your request for WSH records related to other clients, the City has no records responsive to this request. With respect to the City, the City does not maintain a summary, database or log of the information you have requested. Nor does the City keep a sublist of the information you have requested. Therefore, in order to provide the information you have requested, every public records request response will have to be reviewed. As such, your request for documents and information is extensive, and will require extensive use of information technology resources, or extensive clerical or supervisory assistance by personnel of the City

¹ Please note that this estimate only includes the costs to make the records available for your review. If you wish to receive copies of responsive records, we will provide you with the deposit amount for copies once we know how many pages of non-exempt, responsive records are in the City's possession.

to identify, manage and compile the requested information. It is the policy of the City to impose a duplication charge for copying public records and additional charges in accordance with the fee schedule enumerated in Section 119.07(4), Florida Statutes. It is the City's policy that a deposit be submitted by the requesting party in an amount equal to the anticipated cost of the assembly and duplication before processing will commence, particularly where clerical services of an extensive nature are necessary.

Having reviewed the nature and scope of your request, and after examining all possible means by which the preparation and review of the requested records could be performed, the City has determined that the required advance deposit will be \$2,490.32. This amount includes staff time of 47.48 hours at a rate of \$52.45 per hour (which is based on the hourly rate and fringe benefits associated with the Deputy City Clerk). This review includes the review of 2,849 records at the rate of 1 record per minute.

Pursuant to Florida law, if the actual costs exceed that amount, work will temporarily cease and you will be asked to replenish the deposit, upon which work will resume. You are responsible for the additional amount. Conversely, if the review takes less time, the remaining portion of the deposit will be refunded accordingly. At your convenience, you may submit a check in the amount of \$2,490.32² payable to the City of Homestead, Florida. The City will begin processing your request as soon as your deposit has been received.

- 4) All, in the last 10 years, documents related to WSH's government clients who have been instructed by WSH to stamp, mark or otherwise label financial public records as exempt or confidential.

Response:

With respect to your request for WSH records related to other clients, the City has no records responsive to this request. With respect to the City, please provide clarification as to what "financial public records" you are referring to so that the City can properly respond to this request.

² Please note that this estimate only includes the costs to make the records available for your review. If you wish to receive copies of responsive records, we will provide you with the deposit amount for copies once we know how many pages of non-exempt, responsive records are in the City's possession.

- 5) All, in the last 10 years, documents for the government clients who WSH has sent financial or billing records to which have been stamped confidential and/or exempt.

Response:

With respect to your request for WSH records related to other clients, the City has no records responsive to this request. With respect to the City, no invoices received by the City from WSH have been stamped "confidential and/or exempt."

- 6) All, in the last 10 years, documents related to any occasion where WSH and/or their clients have refused to comply with a judge's direct verbal orders related to public records

Response:

The City has no records responsive to this request.

- 7) All billing documents, since 2012, in every case where WSH is representing Homestead's interest against lawsuits filed by Dr. James Eric McDonough, separated by case/incident.

Response:

In order to provide the information you have requested, each record will need to be reviewed and redacted, where necessary. As such, your request for documents and information is extensive, and will require extensive use of information technology resources, or extensive clerical or supervisory assistance by personnel of the City to identify, manage and compile the requested information. It is the policy of the City to impose a duplication charge for copying public records and additional charges in accordance with the fee schedule enumerated in Section 119.07(4), Florida Statutes. It is the City's policy that a deposit be submitted by the requesting party in an amount equal to the anticipated cost of the assembly and duplication before processing will commence, particularly where clerical services of an extensive nature are necessary.

Having reviewed the nature and scope of your request, and after examining all possible means by which the preparation and review of the requested records could be performed, the City has determined that the required advance deposit will be \$212.80. This amount includes attorney time of 1 hour at a rate of \$212.80 per hour. This review includes the review of 86 pages of invoices.

Pursuant to Florida law, if the actual costs exceed that amount, work will temporarily cease and you will be asked to replenish the deposit, upon which

work will resume. You are responsible for the additional amount. Conversely, if the review takes less time, the remaining portion of the deposit will be refunded accordingly. At your convenience, you may submit a check in the amount of \$212.80³ payable to the City of Homestead, Florida. The City will begin processing your request as soon as your deposit has been received.

- 8) All records, communications and billing documents, since 2012, in every case where WSH is representing Homestead's interest against Dr. James Eric McDonough separate from lawsuits, separated by case/incident. Including but not limited to the events surrounding the July and August 2016 council meetings.

Response:

The City does not know how to respond to this request as the City is unsure what you mean by cases against your interest, "separate from lawsuits." Please provide clarification as to the cases you are referring to.

- 9) All billing documents, since 2012, where WSH has charged to review Dr. McDonough's records request, separated by request.

Response:

Please provide clarification as to what you mean by "review Dr. McDonough's records request." The City presumes that your request seeks charges by WSH for its review of responsive records for applicable exemptions and confidentiality. If this is not the case, please advise.

- 10) Every document, email, text, etc., in the last 10 years, of the government clients where WSH attorneys have had communications with public officials using private email, phone numbers or text, thereby avoiding capture as a public record.

Response:

With respect to your request for WSH records related to other clients, the City has no records responsive to this request. With respect to the City, please provide clarification as to what you mean by "public officials." The City presumes you are referring to elected officials. If this is not the case, please advise.

³ Please note that this estimate only includes the costs to make the records available for your review. If you wish to receive copies of responsive records, we will provide you with the deposit amount for copies once we know how many pages of non-exempt, responsive records are in the City's possession.

- 11) All documents, in the last 10 years, related to every allegation against the government clients represented by WSH that has been made pertaining to overbilling in response to public records request, separated by case/incident/client.

Response:

With respect to your request for WSH records related to other clients, the City has no records responsive to this request. With respect to the City, please provide clarification as to what you mean by "allegations." The City presumes your request includes only formal allegations made within lawsuits. If this is not the case, please advise.

- 12) WITHDRAWN

- 13) All documents where public records have been requested from WSH under FSS. 119.

- a) Sublist of every response sent to records requestors.

Response:

With respect to your request for WSH records related to other clients, the City has no records responsive to this request. With respect to the City, please provide clarification as to whether your request seeks instances where the City has received a public records request and requested responsive records from WSH or if you are referring to instances where a public records request has been made directly to WSH.

- 14) All documents related to the decision to not comply with Judge Bailey's order to provide a list of hourly rates for records production, and if the communications are exempt, the correspondence redacted as to the body, but unredacted in subject, to from and copied thereto.

Response:

The City has no records responsive to this request.

Mr. James McDonough
February 14, 2018
Page 7

15) All documents showing that IT services directly cost the city \$45.45/hour for records production.

Response:

IT services actually cost the City far in excess of \$45.45/hour for records production. Yet, the City only charges \$45.45/hour for IT services in responding to public records requests. The records reflecting the actual costs to the City have previously been produced. Please let us know if you would like additional copies. If so, the City will again provide the records.

16) WITHDRAWN

Should you have any questions, please do not hesitate to contact me at 305-224-4442.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Sewell".

Elizabeth Sewell, MMC, MPA
City Clerk

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

**DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE**, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

**PLAINTIFF'S VERIFIED MOTION TO COMPEL
BETTER DISCOVERY RESPONSES AND FOR SANCTIONS**

BACKGROUND OF DISCOVERY

1. At the first hearing in this case, on July 31, 2017, the honorable Judge Bailey: a) found CITY had not produced the requested records; and b) verbally ordered CITY to produce a list of the hourly rates for records production and to file it with this Court. Attorney for CITY, Matthew Mandel, drafted the order conveniently excluding the provision on the hourly rates. Thereafter, CITY in bad faith refused to comply, forcing Plaintiff to file for an amended order, which CITY objected to, including said provision. The amended order was granted on September 20, 2017. CITY then ignored repeated requests to comply with the provision of the amended order to provide and file the list of hourly fees, until March 23, 2018. This was a delay of eight (8) months after the verbal order and six (6) months after the amended written order.

2. In the interim instead of complying with this Court's order, CITY initiated an abusive discovery process against Plaintiff. On August 7, 2017, CITY filed a request for production of documents and an amended request. The next day, Plaintiff, informally, advised

counsel for CITY that the requests were an improper fishing expedition. Then on September 22, 2017, Plaintiff filed his response to CITY's request for documents. On October 13, 2017 CITY sent Plaintiff a letter requesting better discovery responses and threatening to compel such. CITY falsely claimed therein that Plaintiff had filed his public records request with an ulterior motive. On October 20, 2017, though not believing CITY had a right to the requested documents, to reduce burdens on this Court and to move the case forward, Plaintiff filed an amended response to CITY's request for production of documents.

3. On December 20, 2017, not satisfied with Plaintiff's amended response, CITY filed a motion to compel. Within the motion to compel CITY deliberately attempted to mislead this Court falsely claiming on page 8 that **"McDonough has stated that he intends to someday write a book on how to harass government entities with public records requests and prevail in court on the subsequent lawsuits."** CITY then asserted that this alleged statement entitled them to invasive discovery against Plaintiff. CITY further claimed that due to this alleged statement they had a right to recover their attorney fees and cost from Plaintiff.

4. On September 22, 2017, Plaintiff filed his first request for production of documents. On October 30, 2018, CITY filed a response objecting to all requests except #'s 15 and 16, stating that those documents would be produced at a later mutually agreeable time. CITY's objection to at least request # 1, is still relevant and reasonably calculated to lead to discoverable material and was in bad faith. Finally, on December 19, 2017, after a three-month delay CITY produced the records allegedly responsive to request # 16, a list of IT salaries and benefits but failing to claim who performed the work. Additionally, no documents showing a cost to the CITY of \$45.45/hour as requested in # 15 were ever provided.

5. Currently, on December 7, 2018, Plaintiff filed a motion for summary judgement on his Fourth Amended Complaint. Afterwards, CITY filed its answer and affirmative defenses

denying Plaintiff's allegations and facts, claiming no records requests were in violation, and scandalously alleging Plaintiff filed his records request for an improper purpose and is engaged in a conspiracy.

6. Further, CITY without reason provided unredacted copies of the videos responsive to REQUEST 4 and REQUEST 6, and disingenuously claims there is no dispute remaining in its own motion for summary judgement, while simultaneously claiming the redactions were not unlawful in its answer and affirmative defenses.

7. On January 11, 2019, CITY propounded requests for admissions and related interrogatories on Plaintiff. On January 16, 2019, Plaintiff responded to CITY's requests for discovery, and similarly propounded requests for admissions and interrogatories on CITY. CITY responded in bad faith to Plaintiff's request for discovery on February 15, 2019, as shown below.

ARGUMENT

8. CITY has played fast and loose from the beginning including with its response to records requests, the facts of the case, as well as the initial and current discovery.

9. Florida has broad discovery and liberal public records laws. See *Fla. R.Civ. P.* 1.280(b)(1) and *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994), rev. denied, 651 So. 2d 1192 (Fla. 1995), respectively. Additionally, "discovery in a context such as the one at hand may well be appropriate in the circumstance where a good faith belief exists that the public agency may be playing 'fast and loose' with the requesting party or the court, once its statutorily delegated authority is activated." *Lorei v. Smith*, 464 So. 2d 1330, 1333 (Fla. 2d DCA 1985), review denied, 475 So. 2d 695 (Fla. 1985).

10. CITY has obstructed and delayed providing court ordered documents to Plaintiff, while making false and/or deliberately misleading statements specifically to abuse the discovery process. CITY has hindered, obstructed and/or delayed Plaintiff's discovery at every step

including providing court ordered documents. CITY is now being deliberately deceptive and evasive in their current responses. It should be certain at this juncture that CITY is indeed playing “fast and loose” with both the Plaintiff and this Court and intends to continue to do so.

11. Therefore, CITY should be ordered to fully comply in good faith with Plaintiff’s discovery requests.

PENDING REQUEST FOR ADMISSIONS AND INTERROGATORIES

A. General Bad Faith in Responding to Current Discovery

12. As a first fact pattern showing that that CITY is not acting in good faith, CITY filed its discovery requests with extensive instructions and definitions, but now objects to Plaintiff copying and pasting CITY’s own instructions and definitions in Plaintiff’s discovery requests. Thus, showing that CITY either propounded its discovery request in bad faith, is responding to Plaintiff’s discovery request in bad faith, or both.

13. A second fact pattern showing bad faith, is the interrogatories instructed CITY for each request for admission that they deny or provide a qualified admission to, to state all facts supporting such denial or qualified admission, and to identify all witnesses with knowledge and/or documents supporting the response. CITY has failed to provide an interrogatory answer for each denial or qualified admission and has failed to identify any witnesses and/or documents.

14. A third fact pattern showing bad faith, is CITY failed to verify the interrogatories, though demanded a verified interrogatory from Plaintiff.

15. A fourth fact pattern showing bad faith, is that since Plaintiff’s filing of the Fourth Amended Complaint and Motion for Summary Judgement, CITY has filed an answer and affirmative defenses, and propounded discovery. Within the answer and affirmative defenses CITY provides unsworn denials to all Plaintiff’s verified allegations and facts. Further, CITY continues its erroneous claim that Plaintiff filed his request for an improper purpose, and now

additionally claims that Plaintiff conspired to obtain his records at a lower cost.¹ Yet, CITY claims that Plaintiff has no right to discovery because he asserted there were no factual disputes in his motion for summary judgment, while ignoring its actions after said filing.

B. CITY's Responses to Plaintiff's Admissions and Interrogatories

16. CITY responded to admission #'s 1 and 2 claiming they were irrelevant and not reasonably calculated to lead to discovery of admissible evidence, as all claims relevant to Request 1 and 3 have been dismissed. However, it is noted that CITY was forced to provide these requested records after the first hearing, which is itself an unlawful refusal, and CITY continues to falsely claim it either did not violate the law, and/or that the records were produced before the filing of suit. Additionally, if CITY failed to provide records until after Plaintiff filed suit, Plaintiff would be entitled to his reasonable cost of enforcement, making the requested admissions relevant. Therefore, CITY should be ordered to respond to admission #'s 1 and 2.

17. CITY responded to admissions #'s 3, 4, 5, 8 and 9 claiming that the records are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. However, admissions #'s 3, 4 and 5 are related to the false claims CITY made concerning alleged statements made by Plaintiff. CITY claims these alleged statements make CITY eligible for abusive discovery against Plaintiff and make CITY eligible for its attorney fees and cost, as Plaintiff allegedly filed his requests for an improper purpose. Whereas, admissions #'s 8 and 9 are relevant to show that Plaintiff though not required sent multiple follow-up emails and repeatedly warned CITY that it was in violation of the law, as Plaintiff was trying to avoid unnecessary litigation. Thus, further evidencing that Plaintiff did not, as alleged by CITY, file his request with an

¹ CITY appears to base its sham conspiracy claim on emails Plaintiff provided in discovery. However, the emails focused on were only part of a chain, where the full context is evidence against such a claim. If CITY makes such a claim, using the few emails taken from the chain excluding the full context, it would be a knowingly deceptive one.

improper purpose to cause a violation of the Public Records Act. Therefore, CITY should be ordered to respond in good faith to admission #'s 3, 4, 5, 8 and 9.

18. CITY denies admission # 10. In the related interrogatory response CITY claims "All 53,000 records were not public post as they **likely** also includes messages and other data/records that had not been publicly posted on Facebook." However, CITY failed to identify any witness with knowledge and/or documents supporting the response. The use of the term "likely" is telling, and CITY does not affirmatively claim that there were such records. Moreover, it is a near certainty that most of the allegedly responsive 53,000 records were publicly posted, making their review for exempt material improper. Further, it is clear from REQUEST 5 that Facebook post and comments were not what Plaintiff had requested. CITY read REQUEST 5 in an overly broad manner, including non-requested records thereby inflating the time required and unlawfully increasing the cost of production. Therefore, CITY should be ordered to respond in good faith to admission # 10 and the related interrogatories.

19. CITY denies admission # 11, even though Plaintiff later clearly stated that he was not looking for Facebook post, and CITY never provided a second invoice with respect to this clarification. Therefore, CITY should be ordered to respond in good faith to admission # 11.

20. CITY without basis denies admission # 12, i.e. that there is a policy of charging \$45.45/hour for ITS time, even though Plaintiff has evidence that CITY has charged this specific rate of \$45.45/hour for over five (5) years. Further, CITY filed its 2016 and 2017 list of hourly rates for records production both showing a rate of \$45.45/hours when ITS services are required. Additionally, CITY failed to even respond to the related interrogatories. Therefore, CITY should be ordered to respond in good faith to admission # 12 and the related interrogatories.

21. Similarly, CITY falsely denies related admission # 13, even though the records produced by CITY responsive to Plaintiff's first request for production of documents show no

combination of wages and/or benefits totaling \$45.45/hour. CITY now claims that there are benefits and salary combinations within the IT department which exceed \$45.45/hour. However, this is not relevant to the admission and there are benefit and salary combinations which are less than \$45.45/hour, including the IT coordinator. Whereas, charges must reflect an actual cost incurred by CITY. Therefore, CITY should be ordered to respond in good faith to admission # 13.

22. CITY admits in admission #14 that it “mistakenly” charged Plaintiff for work at the higher ITS rate for work which was performed by staff at a lower cost. Then CITY claims had it “accurately” prepared the invoice “the cost would have exceeded the amount actually charged.” Yet, CITY did not claim what portion of the five (5) hours were overcharged, nor claim what other fees and time were excluded which would have led to a higher cost. However, the instructions in the interrogatory specifically requested CITY to provide all documents and identify witnesses for any qualified admission, which CITY has failed to do. Therefore, CITY should be ordered to respond in good faith to admission # 14, and its related interrogatories.

23. CITY objects to admission #'s 15 and 16 claiming them to be vague and ambiguous. CITY has multiple times now redacted video footage, under FS. 119.071(4)(d). CITY has claimed this is well within the law and the videos are properly exempt from disclosure.² This is a central tenet of the case at bar. Plaintiff has alleged CITY has a pattern of redacting such video and is now asking if this is the CITY's policy. CITY is not confused as to what information is sought. Therefore, CITY should be ordered to respond on good faith to admission #'s 15 and 16.

24. CITY objects to admission #'s 17 and 18 claiming they seek a legal conclusion and/or work-product. First, CITY has the burden to prove the right to an exemption, and *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010) is the only case ever cited in support of

² CITY did unexpectedly provide unredacted copies of the videos responsive to Request 4 and Request 6, but it was after the filing of the complaint, and appears only so CITY can deceptively claim that all responsive records have been produced and there is no relief left to Plaintiff. Though such does not moot the issues of Plaintiff's cost or whether CITY violated the law.

redacting video. Second, CITY is playing fast and loose claiming that *Rameses* stands for an exemption under FS. 119.071(4)(d), when the holding of *Rameses* was specifically directed to FS. 119.071(4)(c) which only exempts undercover officers. CITY being aided by a professional law firm should be able to discern the holding of a case from the background. Third, admission of a fact does not reveal work-product. Providing certain documents to the interrogatories might be argued as work-product, but that is a different matter, and again CITY has the burden of proving an exemption. Lastly, if CITY has knowledge of such authority and refuses to provide it that only delays litigation wasting more tax dollars and this Court's time.³ Therefore, CITY should be ordered to respond in good faith to admission #'s 17 and 18.

25. CITY objects to admission # 20 claiming it to be irrelevant and not reasonably calculated to lead to admissible material. This is relevant to CITY's alleged inflation of the hours of a request. If an entire day of footage was reviewed as CITY claimed at October 18, 2018 hearing, when only a specific time and date were requested, then it would be an excessive and inflated charge. Therefore, CITY should be ordered to respond in good faith to admission # 20.

26. CITY objects to admission # 21 and simultaneously denies it. CITY objects as vague and ambiguous claiming there is no Request 4 in the Fourth Amended Complaint, and denies if it is based on Request 4-1. The Fourth Amended Complaint listed this request as both Request 4 and Request 4-1. CITY knows which request was referenced and knows that the request was for a specific time to the minute and date. Thus, highlighting CITY's evasive tactics. Therefore, CITY should be ordered to respond in good faith to admission # 21.

27. CITY denies admission # 22, i.e. that the majority of the time was for redacting the video. CITY in the interrogatories argues that the request was not just for video footage but also

³ As of December 7, 2018, CITY had expended an unreasonable \$149,434.71 dollars in this litigation, using at least seven (7) attorneys, to obstruct *pro se* Plaintiff from obtaining any relief.

included other documents including personnel files. This is deliberately misleading as the personnel files were separately billed. Further, CITY fails to provide any documents supporting what amount of time was spent on any part of the request or by any person in their response. Therefore, CITY should be ordered to respond in good faith to admission # 22 and the related interrogatories.

28. CITY denies in admission # 24 that it has often failed to waive the first 30 minutes of time for Plaintiff's requests. However, the only time such a waiver is shown in any invoice sent to Plaintiff was in Request 2. CITY provides no documents to support this denial and is completely silent as to this admission in their interrogatories. Therefore, CITY should be ordered to respond in good faith to admission # 24 and the related interrogatories.

29. CITY denies admission # 25 that Plaintiff has been charged for paper copies when electronic records were available and requested in such form. This denial is baseless and is also not included in the response to interrogatories. CITY has often charged Plaintiff for paper copies of electronic records when requested as such. Therefore, CITY should be ordered to respond in good faith to admission # 25 and the related interrogatories.

30. CITY objects to admissions # 26 and 27 claiming they are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. However, these admissions are relevant as to whether CITY charged for redaction time knowing the exemptions no longer apply and whether CITY is attempting to mislead this Court over an exemption, which Plaintiff has evidence of. See **Exhibit A**. CITY has the burden of proving the right to any objection. Therefore, CITY should be ordered to respond in good faith to admission #'s 26 and 27.

31. CITY objects to admission # 28 claiming it is irrelevant and not reasonably calculated to lead to discovery of admissible evidence and seeks a legal conclusion. CITY then denies the admission. Plaintiff is not seeking a legal conclusion, but the law as applied to the facts.

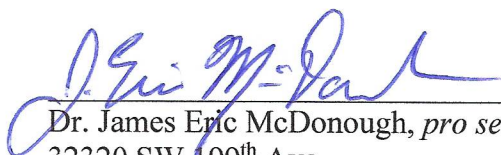
CITY acknowledges that the statute of limitations has run on a claim against CITY. As such CITY can claim no liability. CITY acknowledges that the notice of claim is one of the claims in Plaintiff's related and derivative federal case and NOT the defamation case for which the records were requested. CITY claims that the exemption is proper because the claims are "inextricably intertwined" as was determined in the related records case. However, Florida courts have held that the exemption from disclosure provided by FS. 119.071(1)(d), is temporary and limited in duration. *City of North Miami v. Miami Herald Publishing Co.*, 468 So. 2d 218, 219 (Fla. 1985). The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if disclosure of the information could negatively impact the agency's position in related cases or claims. See *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990). See AGO 94-33, concluding that for purposes of exemption from the Sunshine Law a pending lawsuit is concluded when the suit is dismissed with prejudice or the applicable statute of limitations has run. See also AGO 13-13 (Sunshine Law exemption "does not recognize a continuation of the exemption for 'derivative claims' made in separate, subsequent litigation"). Thus, while proper exemptions under FS. 119.071(1)(d)(1) could be made in the federal case, CITY has no proper continuing basis for claiming such an exemption in the defamation case. Therefore, CITY should be ordered to respond in good faith to admission # 28 and the related interrogatories.

CONCLUSION

CITY has propounded and responded to discovery in bad faith throughout this litigation. CITY's actions continue to waste tax dollars and this Court's time. CITY's obstructionist tactics and delays make a mockery out of the system in general and specifically regarding the Public Records Law which mandates immediacy.

WHEREFORE, it is respectfully requested that this honorable Court: 1) compel CITY to expeditiously comply with Plaintiff's request for admissions and interrogatories; 2) compel CITY to expeditiously comply with Plaintiff's second request for productions of records filed simultaneously herewith; or 3) in the alternative to the above forbid CITY from offering any evidence or testimony related to the matters contained in Plaintiff's discovery requests; 4) order CITY to pay Plaintiff's reasonable cost of enforcement related to these discovery requests; and 5) any other relief this Court may deem just and appropriate.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

CERTIFICATE OF GOOD FAITH CONFERENCE

I hereby certify that I have contacted counsel for Defendant CITY and attempted to resolve this discovery dispute without a hearing, but the issues raised in this Motion could not be resolved.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 5th day of March 2019.

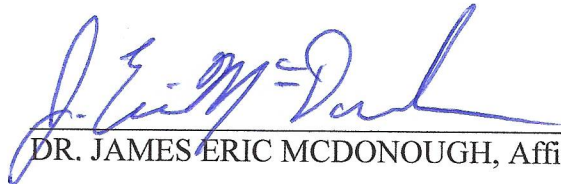
Respectfully submitted,



Dr. James Eric McDonough, *pro se*

VERIFICATION AND SIGNATURE PAGE

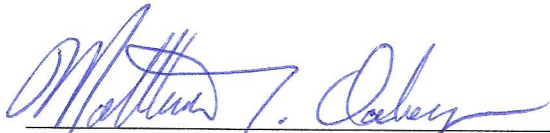
As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.


DR. JAMES ERIC MCDONOUGH, Affiant

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 5th day of March 2019 by Dr. James Eric McDonough.



Signature of Notary Public – State of Florida

Matthew T. Oakey

Name of Notary, Typed, Printed or Stamped

Known X OR Produced Identification _____

Type of Identification Produced _____



EXHIBIT A

Samuel I. Zeskind

From: Samuel I. Zeskind
Sent: Friday, December 30, 2016 2:27 PM
To: Edward G. Guedes
Subject: Re: McDonough/Homestead

Ok, great.

Sent from my iPhone

On Dec 30, 2016, at 2:26 PM, Edward G. Guedes <EGuedes@wsh-law.com> wrote:

Yes.

Sent from my iPhone, which means there's a good chance I dictated the message. Yes, that explains the typos.

On Dec 30, 2016, at 2:14 PM, Samuel I. Zeskind <SZeskind@wsh-law.com> wrote:

Should we request oral argument?

Sent from my iPhone

On Dec 30, 2016, at 2:05 PM, Edward G. Guedes <EGuedes@wsh-law.com> wrote:

Understood. And agree as to handling of SOL issue.

Sent from my iPhone, which means there's a good chance I dictated the message. Yes, that explains the typos.

On Dec 30, 2016, at 1:36 PM, Samuel I. Zeskind <SZeskind@wsh-law.com> wrote:

Thanks, Ed.

I've reviewed and understand the concern. I need to make it clear up front that the City is claiming the exemptions (and is entitled to) based on the Notice of Claim against the City (and not on the Murguido claim, which arose out of the same set of underlying facts). There is simply an overlap in the analysis, because in determining whether to provide a defense to Murguido, the City had to consider the City's potential exposure, i.e. if Murguido could possibly have been within his scope in any of the alleged wrongful acts, if so the City could ultimately be responsible. Obviously, McDonough thought the City could be, since he served the City with a Notice of Claim.

We cannot raise the SoL issue (or at least have to be careful how we address it) because technically the SoL

has run on a claim against the City (as of late last month). However, the fear is that McDonough could seek leave to amend the Murguido suit to add a claim against the City, which could arguably relate back. That fear is based on the fact that, prior to the hearing in the public records case, I tried to settle it by getting McDonough to release the potential claim against the City arising out of the Murguido incident and, in exchange, the records would no longer be exempt and he could have access to everything. McDonough rejected the offer, suggesting he was still considering suing the City.

From: Edward G. Guedes
Sent: Friday, December 30, 2016 1:03 PM
To: Samuel I. Zeskind
Subject: McDonough/Homestead
Importance: High

Sam,

Attached is a redline of the initial brief. I think there's a fair amount of clarifying that we need to provide to make this brief more succinct and persuasive. The bones, as they say, are good. But the argument gets lost once in a while because it's not clear from the outset *precisely* what we're asserting. Read over the edits, especially the margin comments, and you'll get a sense of what troubled me as I read. I think there's an easy fix to all of this, but I want to be sure I'm correct in my assumptions. The redline is saved in AIM.

Regards,

Ed

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

VERIFIED JOINT MOTION FOR ORDER TO SHOW CAUSE AND SANCTIONS

Plaintiff, Dr. James Eric McDonough, proceeding *pro se*, pursuant to *Fla. R. Civ. P.* 1.380(b)(1), hereby files this Verified Motion for Order to Show Cause as to why the non-party witnesses Samuel Zeskind and Elizabeth Sewell should not be held in contempt of court, for their willful failure to appear for deposition after being subpoenaed, and for sanctions. In support thereof, Plaintiff states the following:

FACTS

1. Plaintiff attempted to depose non-party witnesses Samuel Zeskind ("Zeskind") and Elizabeth Sewell ("Sewell").
2. On January 24, 2019, Plaintiff emailed the Zeskind, Sewell, and opposing counsel, to confer on setting dates for the taking of depositions, making it clear that if no dates were provided Plaintiff would schedule the depositions at his own convenience. See **Exhibit A**.
3. On February 5, 2019, Plaintiff filed with the court and served on opposing counsel the Notices of Deposition for both Zeskind and Sewell.

4. On February 8, 2019, Zeskind was served with a subpoena for deposition.
5. On February 15, 2019, City of Homestead (“CITY”) filed a motion for protective order, but never attempted to set it for hearing and it was legally insufficient.
6. On February 21, 2019, Sewell was served with a subpoena for deposition.
7. On February 25, 2019, opposing counsel emailed Plaintiff stating that Zeskind and Sewell would not attend depositions, citing the filed motion for protective order. See **Exhibit B**.
8. On February 26, 2019, Plaintiff emailed Zeskind and Sewell, and copied opposing counsel, informing them that without prior action of the court, if they failed to appear at the depositions they could be held in contempt of court. See **Exhibit C**.
9. On February 26, 2019, opposing counsel emailed Plaintiff claiming that Plaintiff’s subpoenas were deficient as Plaintiff had no basis to compel the appearance of Zeskind or Sewell. See **Exhibit D**.
10. On February 26, 2019, Plaintiff emailed Zeskind, Sewell and opposing counsel, explaining the basis for taking the depositions and reminding them that the subpoenas were issued by the Court and that their appearances were expected. See **Exhibit E**.
11. On February 27, 2019, both Zeskind and Sewell failed to appear for their depositions, and certificates of non-appearance were issued by the court reporter. See **Exhibit F**.

ARGUMENT

12. The Non-Party witnesses Zeskind and Sewell, after being lawfully subpoenaed willfully failed to appear to have their depositions taken. Zeskind and Sewell also never responded to Plaintiff’s communications. Further, the motion for protective order filed by CITY was not filed in good faith and meant to create undue delay and the wasting of resources. As such Zeskind and Sewell should be held in contempt and Zeskind, Sewell, and/or CITY should be sanctioned.

A. No Protective Order Was Granted Before Failing To Attend Depositions.

13. Zeskind and Sewell, without good cause of excuse, ignored a subpoena and failed to be sworn under oath for deposition.

14. *Fla. R. Civ. P.* 1.380(b)(1) holds:

If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court.

15. *Fla. R. Civ. P.* 1.410(f) holds:

Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

16. Disobedience of a court order that has not been stayed or appealed is quintessentially contumacious. See *H.K. Dev., LLC v. Greer*, 32 So.3d 178, 183 (Fla. 1st DCA 2010). A party may not ignore a valid court order except at its peril. See *Johnson v. Allstate Ins. Co.*, 410 So.2d 978, 980 (Fla. 5th DCA 1982) (orders by a court that has jurisdiction over the subject-matter and the parties to the action cannot be completely ignored without risking sanctions). “I think 1.380 sanctions are appropriate. Because court orders can't be ignored and subpoenas can't be ignored without prior action of the Court.” *CB Condominiums, Inc. v. GRS South Florida*, 165 So.3d 739 (2015). Courts have the authority to enforce an order by the exercise of its civil contempt powers, and have a broad arsenal of civil contempt sanctions at their disposal to compel compliance with its orders. See *Parisi v. Broward County*, 769 So.2d 359, 363-65 (Fla. 2000).

17. Zeskind and Sewell were put on proper notice and lawfully subpoenaed. Zeskind and Sewell willfully failed to appear for their depositions and did not have prior action of the Court or Plaintiff excusing their presence. Zeskind and Sewell never contacted Plaintiff but had the CITY attorney send messages. Where after, Plaintiff responded to Zeskind and Sewell reminding them of their obligation and duty to attend the depositions. Any reliance by Zeskind and Sewell on a motion filed by CITY was not in good faith and was contumacious. Non-Party witnesses

Zeskind and Sewell's failure to attend was willful, deliberate, not outside of their control and in bad faith.

18. Therefore, this Court should find Zeskind and Sewell in contempt and levy sanctions against them.

B. The Motion For Protective Order Was Legally Deficient.

19. CITY filed a legally deficient motion for protective order, in bad faith, to obstruct Plaintiff from taking necessary discovery of non-party witnesses.

20. A motion for a protective order must show good cause. See *Fla. R. Civ. P.* 1.280(c). The party seeking the protective order has the burden of showing good cause. *Ankhnoukh v. Benvenuto*, 219 So.3d 96 (Fla. 2d DAC 2017). This showing of good cause must be affirmative. See *Travelers Indem. Co. v. Hill*, 388 So.2d 648 (Fla. 5th DAC 1980). The mere fact that compliance with discovery order will be costly is not, in and of itself, a ground for valid objection. *Ford Motor Co. v. Edwards*, 363 So.2d 867 (Fla. 1st DCA 1978).

21. First, the protective order only makes general unsworn allegations related to annoyance, embarrassment, oppression, or undue burden or expense. No affirmation has been made to support the general allegations of annoyance, embarrassment, oppression, and undue burden on Zeskind or Sewell. Nor has any affirmation been made to support any undue costs on Zeskind, Sewell or CITY. The complaint is *prima facie* deficient and was filed in bad faith.

22. Second, after filing the motion for protective order CITY took no action to set a hearing. Further, documenting the bad faith CITY exhibited when filing the motion for protective order, and in instructing the non-party witnesses to not appear for depositions. CITY deliberately interfering with Plaintiff's depositions is just another one of the tactics used to create further undue delay in litigating the merits of this action.

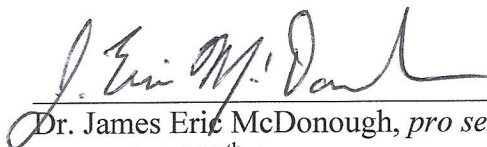
23. Third, CITY is using unethical tactics they would not use with a represented client, as *pro se* Plaintiff is not eligible for attorney fees. CITY fails to comply in good faith with Plaintiff's discovery thereby driving up the costs and time expenditures of Plaintiff. This is done as CITY will not be held accountable for attorney fees to force compliance, and/or to prevent Plaintiff from establishing the truth of CITY's flagrant violations of the Public Records Law.

24. Therefore, this Court should levy sanctions against CITY for interfering in bad faith.

WHEREFORE, Plaintiff respectfully ask this Court for the following relief:

- a) Adjudicate non-party witnesses Zeskind and Sewell are in civil contempt;
- b) Assess monetary fines against the non-party witnesses Zeskind and Sewell;
- c) Incarcerate the non-party witnesses Zeskind and Sell (with a urge provision);
- d) Order non-party witnesses Zeskind and Sewell to sit for deposition;
- e) Order CITY to expedite in good faith Plaintiff's remaining discovery requests;
- f) Order CITY, Zeskind and/or Sewell jointly and severally responsible to pay Plaintiff's costs incurred with the skipped depositions and this motion;
- g) Order CITY to pay all initial costs of future depositions; and
- h) Any other relief this Court finds just and proper.

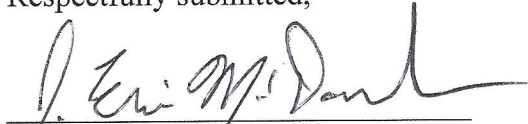
Respectfully submitted


Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 19th day of March 2019.

Respectfully submitted,


Dr. James Eric McDonough, *pro se*

VERIFICATION

As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.

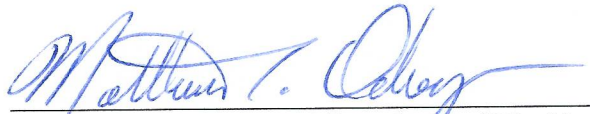

DR. JAMES ERIC MCDONOUGH, Affiant

STATE OF FLORIDA


COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 19th day of March 2019 by

Dr. James Eric McDonough



Signature of Notary Public – State of Florida



Name of Notary, Typed, Printed or Stamped

Known ☒ OR Produced Identification _____

Type of Identification Produced _____



EXHIBIT A



Eric McDonough <phd2b05@gmail.com>

Dates for deposition

Eric McDonough <phd2b05@gmail.com>

Mon, Mar 11, 2019 at 12:58 AM

To: Eric & Vanessa McDonough <phd2b05@gmail.com>

----- Forwarded message -----

From: **Eric McDonough** <phd2b05@gmail.com>

Date: Thu, Jan 24, 2019 at 10:55 PM

Subject: Re: Dates for deposition

To: Elizabeth Sewell <ESewell@cityofhomestead.com>, Samuel I. Zeskind <SZeskind@wsh-law.com>

Cc: Matthew H. Mandel <MMandel@wsh-law.com>

Hello,

I just realized the email asked mistakenly asked for a reply by January 28, 2018. It should have been January 28, 2019.

Thank you.

Dr. James Eric McDonough

On Thu, Jan 24, 2019 at 11:07 AM Eric McDonough <phd2b05@gmail.com> wrote:

Hello Elizabeth and Sam,

I hope you are both well.

I would like to take both of your depositions, it will take about 2 hours or less each. Please kindly provide three dates between February 5, 2019 and March 5, 2019 which you would be available to have your depositions taken. Mr. Mandel was e-mailed about this matter this morning.

If I do not hear back from you or Mr. Mandel by the 4:pm on Monday January 28, 2018, it will be understood and agreed by all parties that you have no intention of cooperating with scheduling these depositions, and I will move forward with scheduling them for a time most convenient for me.

Thank you

Dr. James Eric McDonough

EXHIBIT B



Eric McDonough <phd2b05@gmail.com>

Incorrect time on Subpoena

Matthew H. Mandel <MMandel@wsh-law.com>

Mon, Feb 25, 2019 at 10:30 AM

To: Eric McDonough <phd2b05@gmail.com>

Cc: Elizabeth Sewell <ESewell@cityofhomestead.com>, "Samuel I. Zeskind" <SZeskind@wsh-law.com>

Hello Dr. McDonough,

Please note that, in light of our motion for protective order, neither Ms. Sewell nor Mr. Zeskind will be appearing for the depositions that you set for February 27. As soon as the matter is transferred back to Judge Rebull, we will notice our motion for protective order for hearing.

Thank you.

[Quoted text hidden]

Matthew H. Mandel

Member / Chair, Litigation Division



**WEISS SEROTA HELFMAN
COLE & BIERMAN**

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



200 East Broward Blvd., Suite 1900 | Fort Lauderdale, FL 33301

P: (954) 763-4242 F: (954) 764-7770 wsh-law.com | vCard

**THINK BEFORE YOU PRINT**

This message, together with any attachments, is intended only for the addressee. It may contain information which is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use, or any action or reliance on this communication is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by telephone (954) 763-4242 or by return e-mail and delete the message, along with any attachments.

Pursuant to the Fair Debt Collection Practices Act, this communication is from a debt collector. Any information obtained will be used for the purpose of collecting a debt.

EXHIBIT C



Eric McDonough <phd2b05@gmail.com>

Appearance at Deposition

Eric McDonough <phd2b05@gmail.com>

Tue, Feb 26, 2019 at 12:17 PM

To: Elizabeth Sewell <ESewell@cityofhomestead.com>, "Samuel I. Zeskind" <SZeskind@wsh-law.com>
Cc: "Matthew H. Mandel" <MMandel@wsh-law.com>, "Lroth@cityofhomestead.com" <Lroth@cityofhomestead.com>, "Ggretsas@cityofhomestead.com" <Ggretsas@cityofhomestead.com>, "Pfairclough@cityofhomestead.com" <Pfairclough@cityofhomestead.com>, "Emaldonado@cityofhomestead.com" <Emaldonado@cityofhomestead.com>, Jon Burgess <Jburgess@cityofhomestead.com>, Jenifer Bailey <JBAILEY@cityofhomestead.com>

Dear Sam and Elizabeth,

It has come to my attention that counsel for the City, Matthew Mandel, does not believe there is a right to take your depositions. I strongly disagree.

I cannot, nor am I attempting to, provide you with any legal advice. However, I would not think it prudent to skip the depositions scheduled for February 27, 2019 and creating further undue delay.

It is noted that you both are non-party witnesses to this action and have been subpoenaed as such.

On February 15, 2019, a Motion for Protective Order by the City of Homestead. However, no attempt to schedule a hearing on said motion has been made, nor have either of you personally filed for a protective order.

In this regard, at least one Florida court has stated:

I think 1.380 sanctions are appropriate. Because court orders can't be ignored and subpoenas can't be ignored without prior action of the Court." *CB CONDOMINIUMS, INC. v. GRS SOUTH FLORIDA*, 165 So.3d 739 (2015).

Additionally, Florida Rule of Civil Procedure 1.380(b)(1) holds:

If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court.

As there has been no prior action from this Court granting either of you a protective order, I will be present at the appointed time and place for the taking of your depositions and it is expected that you will both be attending. Failure to attend could lead to consequences such as monetary sanctions and/or being held in contempt of court.

Thank you for your consideration.

Dr. James Eric McDonough

EXHIBIT D



Eric McDonough <phd2b05@gmail.com>

Appearance at Deposition

Matthew H. Mandel <MMandel@wsh-law.com>

Tue, Feb 26, 2019 at 5:21 PM

To: Eric McDonough <phd2b05@gmail.com>

Cc: "Samuel I. Zeskind" <SZeskind@wsh-law.com>, Elizabeth Sewell <ESewell@cityofhomestead.com>

Dr. McDonough,

As you know, we have been attempting to get this matter transferred back to Judge Rebull. While you stated that you do not oppose the transfer, we have still yet to hear back from you regarding the proposed order. Again, once the transfer occurs, we will immediately set the motion for protective order for hearing. Please also note that even if we had not filed a motion for protective order, your subpoenas are deficient, and there is no basis to compel the appearance by either my law partner or the City Clerk.

If we do not hear from you regarding the proposed order on the motion to transfer by 10 am tomorrow, we will presume you agree to the form, and we will submit it to Judge Bailly.

Thank you.

[Quoted text hidden]

Matthew H. Mandel

Member / Chair, Litigation Division



**WEISS SEROTA HELFMAN
COLE & BIERMAN**
AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



200 East Broward Blvd., Suite 1900 | Fort Lauderdale, FL 33301
P: (954) 763-4242 F: (954) 764-7770 wsh-law.com | vCard

**THINK BEFORE YOU PRINT**

This message, together with any attachments, is intended only for the addressee. It may contain information which is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use, or any action or reliance on this communication is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by telephone (954) 763-4242 or by return e-mail and delete the message, along with any attachments.

Pursuant to the Fair Debt Collection Practices Act, this communication is from a debt collector. Any information obtained will be used for the purpose of collecting a debt.

EXHIBIT E



Eric McDonough <phd2b05@gmail.com>

Appearance at Deposition

Eric McDonough <phd2b05@gmail.com>

Tue, Feb 26, 2019 at 5:57 PM

To: Elizabeth Sewell <ESewell@cityofhomestead.com>, "Samuel I. Zeskind" <SZeskind@wsh-law.com>

----- Forwarded message -----

From: **Eric McDonough** <phd2b05@gmail.com>

Date: Tue, Feb 26, 2019, 5:54 PM

Subject: Re: Appearance at Deposition

To: Matthew H. Mandel <MMandel@wsh-law.com>

Dear Counselor,

Thank you for your correspondence. I hope your having a good week.

The deponents are non-party witnesses. City is denying my facts and claiming I filed my request for an improper purpose claiming I owe the City attorney fees. These are the witnesses who would posses the information and be able to answer the questions supporting or refuting the denials and claim of improper purpose.

Even your motion for summary judgement was proper and succeeded (highly doubtful) this issue would still remain.

I absolutely have a basis to question the deponents, and defend against these baseless assertions. Further, the subpoenas were issued by the Court.

I responded yesterday that I did not oppose transfer. I oppose the order to any extent that you may subsequently construe the language therein to include anything more than simply transferring the case. I must do this as twice now you have drafted orders that did not accurately reflect the transactions of the hearings (i.e. the 7/31/2017 and 10/18/2018 hearings) and/or disingenuously claimed the orders were something different than what actually transpired.

If you cannot make the deposition I will still happily provide you with the video and transcripts, once I obtain them.

I expect to see the deponents tomorrow, and further request that you will not try to obstruct my discovery. I and create either undue delays in this litigation.

Sincerely,

Dr. James Eric McDonough

On Tue, Feb 26, 2019, 5:21 PM Matthew H. Mandel <MMandel@wsh-law.com> wrote:

Dr. McDonough,

As you know, we have been attempting to get this matter transferred back to Judge Rebull. While you stated that you do not oppose the transfer, we have still yet to hear back from you regarding the proposed order. Again, once the transfer occurs, we will immediately set the motion for protective order for hearing. Please also note that even if we had not filed a motion for protective order, your subpoenas are deficient, and there is no basis to compel the appearance by either my law partner or the City Clerk.

If we do not hear from you regarding the proposed order on the motion to transfer by 10 am tomorrow, we will presume you agree to the form, and we will submit it to Judge Bailly.

EXHIBIT F

1 IN THE CIRCUIT COURT OF THE
2 ELEVENTH JUDICIAL CIRCUIT IN AND
3 FOR MIAMI-DADE COUNTY, FLORIDA

4 CIVIL DIVISION

5 CASE NO.: 17-017515 CA (13)

6 DR. JAMES ERIC MCDONOUGH, A.K.A.
7 DOC JUSTICE, Individually and in his
8 capacity as an investigative journalist
9 for PHOTOGRAPHYISNOTACRIME.COM
10 Plaintiff,

11 vs.

12 CITY OF HOMESTEAD,
13 a Florida municipal corporation,
14 Defendant,
15 _____/

16 CERTIFICATE OF NON-APPEARANCE

17 I, MONICA WASHINGTON, Court Reporter, do
18 hereby certify that I did appear for the deposition of:

19 WITNESS: Elizabeth Sewell

20 PLACE: 50 NW 15th Street, Suite 110
21 Homestead, Florida 33033

22 DATE: Wednesday, February 27, 2019

23 TIME: 11:00 - 11:30 a.m.

24 EXAMINER: Dr. James Eric McDonough

25 pursuant to Notice of Taking Deposition, and that the
aforesaid witness did not appear at that time and place.

WITNESS my hand and official seal at
Miami-Dade County, Florida, this 27th of February, 2019.

MONICA WASHINGTON, FPR
Court Reporter and Notary Public
State of Florida at Large.

1 IN THE CIRCUIT COURT OF THE
2 ELEVENTH JUDICIAL CIRCUIT IN AND
3 FOR MIAMI-DADE COUNTY, FLORIDA

4 CIVIL DIVISION

5 CASE NO.: 17-017515 CA (13)

6 DR. JAMES ERIC MCDONOUGH, A.K.A.
7 DOC JUSTICE, Individually and in his
8 capacity as an investigative journalist
9 for PHOTOGRAPHYISNOTACRIME.COM
10 Plaintiff,
11

12 vs.

13 CITY OF HOMESTEAD,
14 a Florida municipal corporation,
15 Defendant,
16 _____/

17 CERTIFICATE OF NON-APPEARANCE

18 I, MONICA WASHINGTON, Court Reporter, do
19 hereby certify that I did appear for the deposition of:

20 WITNESS: Samuel Zeskind

21 PLACE: 50 NW 15th Street, Suite 110
22 Homestead, Florida 33033

23 DATE: Wednesday, February 27, 2019

24 TIME: 9:00 - 9:30 a.m.

25 EXAMINER: Dr. James Eric McDonough

 pursuant to Notice of Taking Deposition, and that the
aforesaid witness did not appear at that time and place.

 WITNESS my hand and official seal at
Miami-Dade County, Florida, this 27th of February, 2019.

MONICA WASHINGTON, FPR
Court Reporter and Notary Public
State of Florida at Large.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

**DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE**, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,


vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

PLAINTIFF'S FIRST AND VERIFIED NOTICE OF FILING

Pro se Plaintiff, Dr. James Eric McDonough, hereby files this notice of filing of email communications between Samuel Zeskind and Edward Guedes counsel for Defendant City of Homestead. See **Exhibit A** attached hereto. This email exchange shows that Mr. Zeskind knowingly and deliberately mislead this court in related case, Case No. 16-12412, about responsive records which were not produced to Plaintiff.

Respectfully submitted


Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 26th day of March 2019.

Respectfully submitted,


Dr. James Eric McDonough, *pro se*

VERIFICATION

As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.


DR. JAMES ERIC MCDONOUGH, Affiant

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 26th day of March 2019 by

Dr. James Eric McDonough


Signature of Notary Public - State of Florida


Name of Notary, Typed, Printed or Stamped

Known ☒ OR Produced Identification _____

Type of Identification Produced _____



EXHIBIT A

Samuel I. Zeskind

From: Samuel I. Zeskind
Sent: Friday, June 09, 2017 7:43 AM
To: Edward G. Guedes
Subject: Re: McDonough

Thanks, Ed. I'll review this morning. I definitely struggled with that section (and recommended at the outset, before we ever even had the hearing, that we not fight that issue) I will call you today to discuss and explain why they were not produced

Sent from my iPhone

On Jun 8, 2017, at 8:45 PM, Edward G. Guedes <EGuedes@wsh-law.com> wrote:

Sam,

Attached is my redline of the reply/cross-answer brief (saved in AIM). There are substantial revisions, particularly with respect to the arguments pertaining to the earlier non-production of documents that were produced in response to the subsequent request. I had serious problems with the way the argument was articulated. I still think we made a serious mistake in not producing the two existing invoices in response to the first request. Not sure who made that call, but it was playing far too close to the line. I almost decided to confess error, but then thought about it longer and re-drafted.

We should discuss before filing to make sure we're on the same page.

Ed

<3BZ1921.DOCX>

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

**DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE**, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

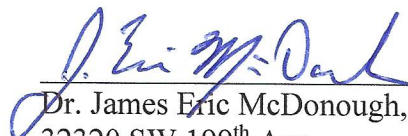
vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

PLAINTIFF'S SECOND AND VERIFIED NOTICE OF FILING

Pro se Plaintiff, Dr. James Eric McDonough, hereby files this notice of filing of an Alternative Writ of Mandamus issued against Defendant City of Homestead in a new records case, Case No. 19-06869, when Defendant produced records after the filing of suit. Further, Defendant provided additional responsive records in this new case two more times after being chastised for not producing all responsive documents. See **Exhibit A** attached hereto.

Respectfully submitted



Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 26th day of March 2019.

Respectfully submitted,


Dr. James Eric McDonough, *pro se*

VERIFICATION

As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.


DR. JAMES ERIC MCDONOUGH, Affiant

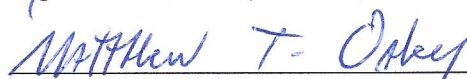
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 26th day of March 2019 by

Dr. James Eric McDonough


Signature of Notary Public / State of Florida


Name of Notary, Typed, Printed or Stamped

Known ☒ OR Produced Identification _____

Type of Identification Produced _____



EXHIBIT A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

DR. JAMES ERIC MCDONOUGH,

CASE NO. 19-6869 CA 15

Plaintiff,

v.

CITY OF HOMESTEAD, a Florida Municipal
Corporation,

Defendant.

ALTERNATIVE WRIT IN MANDAMUS

TO: ELIZABETH SEWELL, MMC, City Clerk, City of Homestead City Hall, Office of the
City Clerk, 100 Civic Court, Homestead, Florida 33030.

On March 12, 2019, Dr. James Eric McDonough ("Plaintiff") filed an Amended Complaint against the City of Homestead ("City" or "Defendant-City"). In the Amended Complaint, the Plaintiff alleges that he requested records pursuant to Chapter 119, Florida Statutes, by emailing the request to the City's Clerk on February 18, 2019 (Am. Pet. ¶ 6 & Ex. A). The Plaintiff alleges that section 119.07(1)(a), Florida Statutes, imposes a "non-discretionary and statutory duty" upon the City to "permit inspection and copying of public records" (Am. Pet. ¶ 15). According to the Plaintiff, he possesses the right to receive non-exempt public records under article I, section 24, Florida Constitution and the Public Records Act, and that the instant records do not qualify as "exempt from disclosure." *Id.* at ¶¶ 16-17. As alleged by the Plaintiff, the Defendant-City acknowledged his records request on February 19, 2019 but did not provide the requested records until March 11, 2019. *Id.* at ¶¶ 7 & 10 & Exs. B & D.

YOU ARE COMMANDED to serve written defenses to the Amended Complaint upon the Plaintiff, Dr. James McDonough at 32320 SW 199th Avenue, Homestead, Florida 33030, within 20 days after being served with this alternative writ. *See* Fla. R. Civ. P. 1.140(a)(1) & 1.630(e). After the Defendant-City files its responsive pleading, the Court will schedule an immediate hearing as required by section 119.11(1), Florida Statutes.

DONE and ORDERED in Miami-Dade County, Florida, on March 13, 2019.

CLERK OF COURT, COUNTY OF MIAMI-DADE

I hereby certify that the foregoing is a true and
correct copy of the original on file in this
office.

AD

HARVEY RUMIN, CLERK MAR 13 2019
Clerk and County Clerk

County Clerk



Hon. Jose Rodriguez,
Circuit Court Judge

[Handwritten signature]
801 352



Eric McDonough <phd2b05@gmail.com>

Response to Records Request Murguido Leave

Elizabeth Sewell <ESewell@cityofhomestead.com>
To: Eric McDonough <phd2b05@gmail.com>

Mon, Mar 11, 2019 at 11:14 AM

Good morning Mr. McDonough,

Attached are the responsive records to your public record request dated February 18, 2019.

From: Eric McDonough [mailto:phd2b05@gmail.com]
Sent: Monday, February 18, 2019 6:45 PM
To: Elizabeth Sewell <ESewell@cityofhomestead.com>
Subject: Records Request Murguido Leave

Dear Elizabeth,

I am requesting all records, documents, leave slips, etc. ad infinitum related to any leave taken by Murguido between April 9th, 2013 and April 9th 2015. This includes sick leave, vacation leave, holiday leave, administrative leave and comp time.

Also requested is any leave or travel for training or any other official reason.

Thank you

Dr. James Eric McDonough



PRR JAMES ERIC McDONOUGH - Murguido Leave.pdf
1581K



Eric McDonough <phd2b05@gmail.com>

Response for Remaining non-produced records

Elizabeth Sewell <ESewell@cityofhomestead.com>
To: Eric McDonough <phd2b05@gmail.com>

Fri, Mar 15, 2019 at 2:42 PM

Good afternoon Mr. McDonough,

The remaining responsive records are in the below dropbox link.

<https://www.dropbox.com/sh/29mthue5x4aya4j/AAaInxseeliDctDDFKVSLjGPd?dl=0>

From: Eric McDonough [<mailto:phd2b05@gmail.com>]
Sent: Wednesday, March 13, 2019 10:04 PM
To: Elizabeth Sewell <ESewell@cityofhomestead.com>
Cc: Matthew Pearl <mpearl@wsh-law.com>; Matthew H. Mandel <MMandel@wsh-law.com>
Subject: Remaining non-produced records

Dear Elizabeth,

I have not received a response acknowledging my request this morning for the remaining responsive records which were not supplied in the initial response on 3/11/2019.

As you are aware Judge Rodriguez issued an Alternative Writ in Mandamus today requiring the City to respond with its defenses within 20 days, thereafter an immediate hearing will be set.

While my Amended Complaint stated that records were provided on 3/11/2019, it was not clear that not all records had been produced.

Please provide the remaining responsive records by Monday 3/18/2019.

If you fail to produce the remaining records I will have to consider contacting Judge Rodriguez's chambers again to set an additional immediate hearing to force their production, as is my right under FS. 119.11(1). However, I prefer to minimize time and resources wasted by all parties including the court.

Thank you for your compliance.



Eric McDonough <phd2b05@gmail.com>

Response for Remaining non-produced records

Elizabeth Sewell <ESewell@cityofhomestead.com>

Thu, Mar 21, 2019 at 12:22 PM

To: Eric McDonough <phd2b05@gmail.com>

Cc: Julissa Chavez <JChavez@cityofhomestead.com>

Good afternoon Mr. McDonough,

Attached are additional records responsive to your public records request dated February 18, 2019. These records have been redacted pursuant to section 119.071(5)(b), Florida Statutes ("Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution."). Also, additional responsive records, in the form of doctors' notes required to substantiate medical leave requests, have been withheld as confidential and exempt from disclosure pursuant to Health Insurance Portability and Accountability Act Privacy Rule of 1996 (HIPAA), and sections 119.071(4)(b), 112.08(7), 395.3025(7)(a), 456.057, Fla. Stat.

[Quoted text hidden]

**Murguido Travel Information.PDF**

555K

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

_____ /

**PLAINTIFF, DR. JAMES ERIC MCDONOUGH'S, SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT**

INSTRUCTIONS

1. When producing the documents, please keep all documents segregated by the file in which the documents are contained, and indicate the name of the file in which the document(s) is (are) contained and the name(s) of the documents being produced.

2. If any document requested herein has been lost or destroyed, you are requested to submit in lieu of each such document a written statement that shall:

- (a) describe in detail the nature of the document and its contents;
- (b) identify the person who prepared or offered the document and, if applicable, the person to whom the document was sent;
- (c) specify the date the document was prepared or transmitted, or both; and
- (d) specify, if possible, the date which the document was lost or destroyed and, if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.

- (e) provide a copy of the destruction log if it exists.

3. If any documents otherwise required to be produced by this request are withheld, identify each document or item requested herein that is withheld from production on any claim of privilege, work product, or other immunity from production and for each such document or item state:

- (a) the specific basis on which the document or item is being withheld;
- (b) the date and subject matter of the document or item; and
- (c) the author(s), preparer(s), or producer(s) of the document or item pursuant

to the definition of “identify” contained in these Requests.

4. If you consider any of the following requests, or portions thereof, objectionable, separately state which part is objected to and the ground(s) for each objection.

5. Any request for production of a document shall be deemed to require production of each and every thing executed, created, prepared, received or in effect at any time to the present, or during any other indicated period of time.

6. If you respond to a request for discovery with a response that is complete when made, these requests for production are continuing and, as such, you are nevertheless under a duty to supplement the response to include information thereafter acquired.

7. All requests seek items generated or relating to events as alleged in the instant matter.

DEFINITIONS

1. “City,” refers to Defendant, the City of Homestead, and any agent, employee or other person acting or purporting to act, or who acted or purported to act, on behalf of the City of Homestead at any time until the present, or during any other indicated period of time.

2. “Communications” include both written and verbal exchanges including, but not

limited to, verbal conversations, telephone calls, letters, notes, memoranda, electronic mail (e-mails), text messages, reports, telegrams, confirmations, exhibits, drawings, sketches, minutes, transcripts, summaries and any other “document” as later defined that constitutes, confirms, embodies or otherwise relates to the communications.

3. “Correspondence” include both written and verbal exchanges including, but not limited to, verbal conversations, telephone calls, letters, notes, memoranda, electronic mail (e-mails), text messages, reports, telegrams, confirmations, exhibits, drawings, sketches, minutes, transcripts, summaries and any other “document” as later defined that constitutes, confirms, embodies or otherwise relates to the communications.

4. “Document” shall be given its broadest possible meaning, and shall denote the original or, if unavailable, a copy of the original, in draft or final form, including “redlined” revisions of any written, typed, printed, recorded, computerized, sorted, or graphic matter, however produced, animated, stored or reproduced, and of every kind and description. The term “document(s)” shall include but not necessarily be limited to contracts, agreements, drawings, specifications, sketches, letters, correspondence, messages, notes, memoranda, agreements, modifications, change orders, unilateral changes, electronic mail (e-mails), text messages, or other communications, records of telephone conversations, books, records, confirmations, drafts, notes, work papers, bills, ledgers, status reports, diaries, daily reports, minutes of meetings, journals, entries in journals, personal work papers, personal work files, diaries, logs, punchlists, transmittals, submittals, financial statements, audit reports, financial data, status reports, calendars, schedules, studies, summaries, reports, charts, books, drawings, diagrams, exhibits, video tapes, photographs, movies, tapes, recordings, transcripts, purchase orders, subcontracts, amendments, proposals, estimates, data sheets, computer printouts, computer diskettes or drives,

compact disks (CDs), optical disks, whether sent or received, databases, computer programs, all other records kept by electronic, photographic or mechanical means and all copies or reproductions thereof which are different in any way from the original. The term “document” shall mean all of the above that are in your custody, possession, or control.

5. “All documents” means every document or group of documents that are known to you or that can be located or discovered by a reasonably diligent search.

6. “Person” shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

7. “Identify” with respect to a person means that you will furnish information sufficient to enable Defendants to locate such person, and

a. if the person is a natural person, provide his or her full name, present or last known address, phone number, current and relevant employment, including position, and similar identifying information; and

b. if the person is not a natural person, state whether such entity is a corporation, partnership, or other organization, its full name, present or last known address, phone number, and similar identifying information.

8. “Identify” with respect to a document means and includes the name and address of the custodian of the document, the location of the document, and a general description of the document, including: (1) the type of document (i.e. correspondence, memorandum, facsimile, etc.); (2) the general subject matter of the document; (3) the date of the document; (4) the author of the document; (5) the addressee of the document; and (6) the relationship of the author and addressee to each other.

9. “Concerning” includes referring to, responding to, relating to, connected with, supporting, memorializing, regarding, discussing, analyzing, evidencing, showing, depicting,

describing, reflecting, implying or constituting.

10. As used herein, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders. The term “including” means “including without limitation.”

11. “Demonstrating” includes but is not limited to: referring to, responding to, relating to, connected with, supporting, memorializing, discussing, analyzing, evidencing, showing, depicting describing, reflecting, implying or constituting.

12. The word “or” means “and/or.”

13. The relevant time frame for these requests for production is October 2012 through the date of production unless otherwise specified herein.

DOCUMENTS TO BE PRODUCED

1. Please provide all documents in the possession of City of Homestead which support the redaction of images of police officers from video under FS. 119.071(4)(d).

2. Please provide all documents, communications, and correspondence, from before the filing of the instant lawsuit, between City of Homestead employees and any other person or entity related to the redaction of images of police officers from video.

3. Please provide all documents showing that the City of Homestead incurs a cost of \$45.45/hour when ITS services are required.

4. Please provide every invoice or document sent to a records requestor where \$45.45/hour was charged for ITS time when responding to a records request.

5. Please provide all documents related to any and all policies which City of Homestead follows for documenting the time required to respond to public records requests.

6. Please provide all records which show the actual time, in minutes, spent on REQUEST 2, and documentation of who worked on the request.

7. Please provide all records which show the actual time, in minutes, spent on REQUEST 4-1, and documentation of who worked on the request.

8. Please provide all records which show the actual time, in minutes, spent on REQUEST 6, and documentation of who worked on the request.

9. Please provide all records which show the actual time, in minutes, spent on REQUEST 7, and documentation of who worked on the request.
10. Please provide all records which show the actual time, in minutes, spent on REQUEST 11 (including invoice 11-1 and 11-2), and documentation of who worked on the request.
11. Please provide all records which show the actual time, in minutes, spent on REQUEST 12 (for the invoice provided totaling \$54.82), and documentation of who worked on the request.
12. Please provide all records showing how the estimated time for review was measured or calculated for REQUESTS 5.
13. Please provide all records showing how the estimated time for review was measured or calculated for REQUEST 12 (for the requested \$1.258 million dollar deposit).
14. Please provide all of 53,000 records identified as responsive to REQUEST 5, which were NOT post or comments to the Homestead Police Department's Facebook page nor were messages or data from said Facebook page.
15. Please produce all documents showing any refund, which has been provided to a requestor of records in the last 10 years.
16. Please produce all documents showing any additional request for monies in excess of amount requested for deposit when the requested deposit was not sufficient for the work performed, which has been provided to a requestor of records in the last 10 years.
17. Please provide all documents and invoices showing that the first 30 minutes of time was waived in response to any request(s) for records which has been submitted by Plaintiff, Dr. James Eric McDonough, for which an invoice was billed.
18. Please provide any invoice which was sent in response to a records request from Plaintiff, Dr. James Eric McDonough, where electronic records were requested and existed and copies for paper records were not charged.
19. Please produce all documents and evidence which supports the City of Homestead's contention that Plaintiff, Dr. James Eric McDonough, filed records request or the instant lawsuit for an improper purpose.
20. Every legal complaint in the last 10 years where Homestead has been sued for violation(s) of FS. 119.

Respectfully submitted,

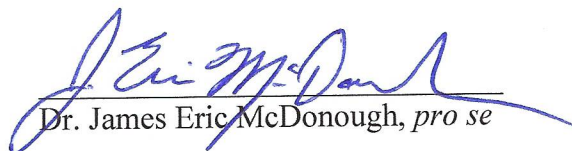
A handwritten signature in blue ink, appearing to read "J. Eric McDonough", written over a horizontal line.

Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 5th day of March 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Eric McDonough", written over a horizontal line.

Dr. James Eric McDonough, *pro se*